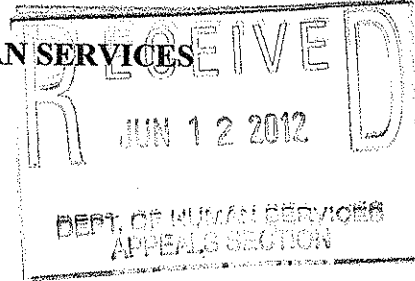


BEFORE THE DEPARTMENT OF HUMAN SERVICES



IN THE MATTER OF: )

)  
)  
Petition by Dawn Pettengill and )  
Named Republican Members of )  
the Iowa House of Representatives )  
for the amending )  
of Subrule 441—78.1(17) relating )  
to payment for abortion. )

Petition for Emergency Rulemaking

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Comes now, Dawn Pettengill and on behalf of the attached list of Republican Members of the Iowa House of Representatives, and pursuant to Iowa Code section 17A.7(1) and the rules in 441—Chapter 4 files this Petition for Emergency Rulemaking as follows:

1. The Department of Human Services (DHS) has the clear and express statutory authority to consider this petition for rulemaking and the authority to take the action requested herein. Specific references will be cited in this petition as necessary.

2. Pursuant to 2011 Iowa Acts, Chapter 129, Sec. 10(1), Subrule 441—78.1(17) relating to payments to physicians for abortions requires amending. It also appears on its face that the rule does not reflect the definition of “medical emergency” as found in Iowa Code section 135L.1(6).

3. Petitioners request DHS to implement the following amendments to Subrule 78.1(17) as follows:

A. Subrule 78.1(17)“b” should be rescinded as neither 2011 Iowa Acts, Chapter 129, Sec. 10(1), nor Iowa Code section 135L.1(6) defines “medical emergency” as including situations when “the fetus is physically deformed, mentally deficient or afflicted with a congenital illness....” As such, this subparagraph of the subrule is in

conflict with the express language and intent of the laws enacted by the General Assembly and signed by the Governor.

B. Subrule 78.1(17)“c” should be rescinded as neither 2011 Iowa Acts, Chapter 129, Sec. 10(1), nor Iowa Code section 135L.1(6) defines “medical emergency” as including situations when the “pregnancy was the result of rape....” As such this subparagraph of the subrule is in conflict with the express language and intent of the laws enacted by the General Assembly and signed by the Governor.

C. Subrule 78.1(17)“d” should be rescinded as neither 2011 Iowa Acts, Chapter 129, Sec. 10(1), nor Iowa Code section 135L.1(6) defines “medical emergency” as including situations when the “ pregnancy was the result of incest....” As such, this subparagraph of the subrule is in conflict with the express language and intent of the laws enacted by the General Assembly and signed by the Governor.

D. Subrule 78.1(17) should be amended to include language that a “physician shall certify” that the “woman has been given the opportunity to view an ultrasound image of the fetus as part of the standard of care before an abortion is performed.” This language is required by the clear and express language in 2011 Iowa Acts, Chapter 129, Sec. 10(1). As such, it is the express language and intent of the laws enacted by the General Assembly and signed by the Governor. Absent the inclusion of this language, Subrule 78.1(17) is not supported by statute.

E. Subrule 78.1(17) should be amended to include language that a “physician shall certify” that the “woman has been provided information regarding the options relative to a pregnancy, including continuing the pregnancy to term and retaining parental rights following the child’s birth, continuing the pregnancy to term and placing the child

for adoption, and terminating the pregnancy.” This language is required by the clear and express language in 2011 Iowa Acts, Chapter 129, Sec. 10(1). As such, it is the express language and intent of the laws enacted by the General Assembly and signed by the Governor. Absent the inclusion of this language, Subrule 78.1(17) is not supported by statute.

4. Petitioners seek emergency rulemaking be initiated due to the following:

A. To ensure that abortions in this state are being performed in conformity with the laws duly enacted by the General Assembly and signed by the Governor.

B. To ensure that DHS rules are fully supported by the clear and express language of the statutory provisions enacted by the General Assembly and signed by the Governor. This assists in removing any confusion on the part of the regulated community and the public as to the clear direction of public policy.

5. As the issues involved in this petition relate solely to statutory language, pursuant to rule 441—4.1 the Petitioners are not providing “data supporting the action urged in the petition” as such data is not relevant.

6. Pursuant to the requirement in rule 441—4.1 “a description of any class of persons, known by petitioner to be affected by, or interested in, the proposed action which is the subject of the petition” includes all taxpayers of Iowa who do not want taxpayer funds used to reimburse abortion services that are not permitted by law. In addition, all citizens of Iowa are impacted by a state agency rule that is not in conformity with the statutory directives enacted by the elected officials of the General Assembly and signed into law by the Governor.

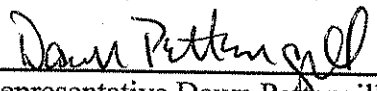
7. Pursuant to rule 441—4.1(1) the “person to whom communications concerning the petition should be directed” is the undersigned.

8. Pursuant to rule 441—4.2 a brief has not been filed in support of this petition as the laws and rules are clear on their face as to what action is needed.

9. Pursuant to rules 441—4.4(1) and 441—4.1 Petitioners do not request a meeting on this petition.

10. Pursuant to rule 441—4.1 citations to the relevant laws and rule are attached.

Respectfully filed:

  
\_\_\_\_\_  
Representative Dawn Pettengill  
PO Box A  
Mount Auburn, Iowa 52313

Dated this 12th day of June, 2012.

Named Republican Members of the Iowa House of Representatives for the amending of  
Subrule 441-78.1 (17) relating to payment for abortion.

State Representative Dwayne A. Alons	1314 7th Street, Hull, IA 51239
State Representative Richard T. Anderson	P.O. Box 157, Clarinda, IA 51632-1210
State Representative Mark A. Brandenburg	2308 Thallas Street, Council Bluffs, IA 51503
State Representative Royd E. Chambers	1001 7th Street, Sheldon, IA 51201
State Representative Betty R. De Boef	10972 170th Street, What Cheer, IA 50268
State Representative Cecil Dolecheck	703 N. Filmore, Mt Ayr, IA 50854
State Representative Jack E. Drake	504 Adair St., Griswold, IA 51535
State Representative Greg Forristall	11917 370th Street, Macedonia, IA 51549
State Representative Joel Fry	1473 - 195th Avenue, Osceola, IA 50213
State Representative Julian B. Garrett	19978 - 115 Ave., Indianola, IA 50125
State Representative Pat Grassley	30331 Vail Ave., New Hartford, IA 50660
State Representative Chris Hagenow	1915 69th Street, Windsor Heights, IA 50324
State Representative Bob Hager	578 Lonnings Drive, Dorchester, IA 52140
State Representative Mary Ann Hanusa	307 Huntington Avenue, Council Bluffs, IA 51503
State Representative Lee Hein	11989 Richland Rd., Monticello, IA 52310
State Representative Erik Helland	6905 Jack London Dr., Johnston, IA 50131
State Representative Lance J. Horbach	1014 Oakland Drive, Tama, IA 52339
State Representative Stewart E. Iverson, Jr.	1944 Sandy Beach Road, Clarion, IA 50525
State Representative Ron Jorgensen	5921 Pine View Dr., Sioux City, IA 51106
State Representative Jarad Klein	1744 Keokuk Washington Rd., Keota, IA 52248
State Representative Kevin Koester	3514 SW Edgewood Lane, Ankeny, IA 50023-9565
Steve Lukan	P. O. Box, New Vienna, IA 52065
State Representative Glen H. Massie	8054 Warren Drive, Des Moines, IA 50320
State Representative Linda Miller	6766 Ridges Court, Bettendorf, IA 52722
State Representative Ross C. Paustian	389 W. Parkview Dr., Walcott, IA 52773
State Representative Dawn E. Pettengill	P.O. Box A, Mount Auburn, IA 52313
State Representative Daniel Rasmussen	1310 8th Avenue NE, Independence, IA 50644
State Representative Walt Rogers	4202 Briarwood Drive, Cedar Falls, IA 50613
State Representative Thomas R. Sands	13247 130th Street, Wapello, IA 52653
State Representative Jason Schultz	P.O. Box 70, Schleswig, IA 51461
State Representative Tom W. Shaw	341 South 1st Street, Laurens, IA 50554
State Representative Jeff Smith	1006 Brooks North Lane, Okoboji, IA 51355
State Representative Chuck Soderberg	800 2nd Street SE, Le Mars, IA 51031-1727
State Representative Annette Sweeney	21547 Hwy S27, Alden, IA 50006
State Representative Jeremy Taylor	3215 Grandview Blvd., Sioux City, IA 51104
State Representative David A. Tjepkes	1610 Lincoln, P.O. Box 12, Gowrie, IA 50543
State Representative Linda L. Upmeyer	2175 Pine Ave, Garner, IA 50438
State Representative Guy Vander Linden	1610 Carbonado Road, Oskaloosa, IA 52577
State Representative Ralph C. Watts	28232 Prospect Avenue, Adel, IA 50003
State Representative Matt W. Windschitl	222 W. Huron Street, Missouri Valley, IA 51555
State Representative Gary Worthan	5647 105th Avenue, Storm Lake, IA 50588

DHS Subrule 441—78.1(17):

**78.1(17)** Abortions. Payment for an abortion or related service is made when Form 470-0836 is completed for the applicable circumstances and is attached to each claim for services. Payment for an abortion is made under one of the following circumstances:

- a.* The physician certifies that the pregnant woman's life would be endangered if the fetus were carried to term.
- b.* The physician certifies that the fetus is physically deformed, mentally deficient or afflicted with a congenital illness and the physician states the medical indication for determining the fetal condition.
- c.* The pregnancy was the result of rape reported to a law enforcement agency or public or private health agency which may include a family physician within 45 days of the date of occurrence of the incident. The report shall include the name, address, and signature of the person making the report. Form 470-0836 shall be signed by the person receiving the report of the rape.
- d.* The pregnancy was the result of incest reported to a law enforcement agency or public or private health agency including a family physician no later than 150 days after the date of occurrence. The report shall include the name, address, and signature of the person making the report. Form 470-0836 shall be signed by the person receiving the report of incest.

2011 Iowa Acts, Chapter 129, Sec. 10(1):

Sec. 10. MEDICAL ASSISTANCE. There is appropriated from the general fund of the state to the department of human services for the fiscal year beginning July 1, 2011, and ending June 30, 2012, the following amount, or so much thereof as is necessary, to be used for the purpose designated:

For medical assistance program reimbursement and associated costs as specifically provided in the reimbursement methodologies in effect on June 30, 2011, except as otherwise expressly authorized by law, and consistent with options under federal law and regulations:

\$ 909,993,421

1. Iowans support reducing the number of abortions performed in our state. For an abortion covered under the program, except in the case of a medical emergency, as defined in section 135L.1, for any woman, the physician shall certify both of the following:

a. That the woman has been given the opportunity to view an ultrasound image of the fetus as part of the standard of care before an abortion is performed.

b. That the woman has been provided information regarding the options relative to a pregnancy, including continuing the pregnancy to term and retaining parental rights following the child's birth, continuing the pregnancy to term and placing the child for adoption, and terminating the pregnancy.

Iowa Code section 135L.1:

135L.1 Definitions.

As used in this chapter unless the context otherwise requires:

1. "Abortion" means an abortion as defined in chapter 146.
2. "Adult" means a person eighteen years of age or older.
3. "Child-placing agency" means any agency, public, semipublic, or private, which represents itself as placing children, receiving children for placement, or actually engaging in placement of children and includes the department of human services.
4. "Court" means the juvenile court.
5. "Grandparent" means the parent of an individual who is the parent of the pregnant minor.
6. "Medical emergency" means a condition which, based upon a physician's judgment, necessitates an abortion to avert the pregnant minor's death, or for which a delay will create a risk of serious impairment of a major bodily function.
7. "Minor" means a person under eighteen years of age who has not been and is not married.
8. "Parent" means one parent or a legal guardian or custodian of a pregnant minor.
9. "Responsible adult" means an adult, who is not associated with an abortion provider, chosen by a pregnant minor to assist the minor in the decision-making process established in this chapter.

96 Acts, ch 1011, §1, 14; 97 Acts, ch 173, §1